

## **9 FAM 40.11 NOTES**

*(CT:VISA-2138; 07-09-2014)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 40.11 N1 BACKGROUND**

*(CT:VISA-1407; 03-17-2010)*

Public Law 101-649, the Immigration Act of 1990 (IMMACT 90) revised section 212(a) of the Immigration and Nationality Act (INA) in its entirety by consolidating the then existing 33 grounds of visa inadmissibility into nine. In 1996, Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), added a vaccination requirement for immigrant visa (IV) applicants. There are now four basic medical standards that apply to visa inadmissibility under INA 212(a)(1) (8 U.S.C. 1182(a)(1)):

- (1) Communicable diseases of public health significance;
- (2) Lack of required vaccinations (immigrant visa (IV) applicants only);
- (3) Physical or mental disorders and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; and
- (4) The condition of being a drug abuser or addict.

### **9 FAM 40.11 N2 HEALTH-RELATED GROUNDS OF INADMISSIBILITY UNDER INA 212(A)(1), AS AMENDED**

*(CT:VISA-1407; 03-17-2010)*

The major elements relating to a finding of inadmissibility under INA 212(a)(1) (8 U.S.C. 1182(a)(1)) include:

- (1) General requirement for medical examination (see 9 FAM 40.11 N3 below);
- (2) Role of panel physician (see 9 FAM 40.11 N7 below);
- (3) Public charge factors (see 9 FAM 40.11 N8 below);
- (4) Communicable diseases of public health significance (see 9 FAM 40.11 N9 below);
- (5) Immunization requirements (see 9 FAM 40.11 N10 below);

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- (6) Physical or mental disorder associated with harmful behavior (see 9 FAM 40.11 N11 below);
- (7) Drug abuse or addiction (see 9 FAM 40.11 N12 below);
- (8) Immigrant visa waiver (see 9 FAM 40.11 N13 below); and
- (9) Nonimmigrant visa waiver (see 9 FAM 40.11 N14 below).

## **9 FAM 40.11 N3 GENERAL REQUIREMENT FOR MEDICAL EXAMINATION**

### **9 FAM 40.11 N3.1 Immigrant Visa (IV) Applicants**

*(CT:VISA-1063; 10-09-2008)*

INA 221(d) (8 U.S.C. 1201(d)) requires all applicants applying for immigrant visas (IV) to undergo a physical and mental examination. The results of this statutorily required medical examination are used to determine the alien's eligibility for such a visa. The medical finding by the panel physician or the Department of Health and Human Services/Public Health Service/Centers for Disease Control and Prevention (HHS/PHS/CDC), if referred to that agency, is binding on you. (See 9 FAM 42.66 Notes.)

### **9 FAM 40.11 N3.2 Nonimmigrant Visa (NIV) Applicants**

*(CT:VISA-1407; 03-17-2010)*

Generally, medical examinations are not required for nonimmigrant visa (NIV) applicants. However, you may require a nonimmigrant applicant to undergo a medical examination if you have reason to believe that the applicant may be inadmissible for a visa under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). (See 9 FAM 41.108 and 9 FAM 42.66 for further information on medical examinations.)

### **9 FAM 40.11 N3.3 Asylee Follow-To-Join (V-92) Beneficiaries**

*(CT:VISA-1452; 07-19-2010)*

All asylee follow-to-join derivatives (Visa 92 (V-92) applicants) entering the United States must have the same medical examination as IV applicants have under INA 221(d) and 234 (8 U.S.C. 1201(d) and 8 U.S.C. 1224). The medical examination for V-92 beneficiaries must be conducted by a panel physician. Similar to refugees, asylee follow-to-join beneficiaries are not required to meet the immunization requirements for immigrants until after one year when they apply for adjustment of status to become permanent residents in the United States.

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**9 FAM 40.11 N3.4 Refugees and V-93 Beneficiaries**

(CT:VISA-1452; 07-19-2010)

All refugees and follow-to-join derivatives (Visa 93 (V-93) beneficiaries) entering the United States must have the same medical examination as IV applicants have under the INA 221(d) and 234 (8 U.S.C. 1201(d) and 8 U.S.C. 1224). The medical examination for refugees may be conducted by a panel physician or by the International Organization for Migration (IOM). The U.S. Government pays the cost of refugee medical exams through the IOM. Unlike IV applicants, refugees, including V-93 beneficiaries, are not required to meet the immunization requirements for immigrants until one year after arrival, when they apply for adjustment status to become permanent residents in the United States.

**9 FAM 40.11 N3.5 Purpose of Medical Examination**

(CT:VISA-1452; 07-19-2010)

- a. The purpose of the medical examination required under the provisions of INA 221(d) (8 U.S.C. 1201(d)) is to determine whether the applicant has a:
  - (1) "Class "A"" condition—A medical condition that renders him or her ineligible to receive a visa; or
  - (2) "Class "B"" condition—A medical condition that, although not constituting an inadmissible condition, represents a departure from normal health or well-being that is significant enough to possibly:
    - (a) Interfere with the applicant's ability to care for himself or herself or to attend school or work; or
    - (b) Require extensive medical treatment or institutionalization in the future.
- b. See 42 CFR Part 34 for the scope of the medical examination.

**9 FAM 40.11 N4 U.S. PUBLIC HEALTH SERVICE/CENTERS FOR DISEASE CONTROL AND PREVENTION (USPHS/CDC) REGULATIONS GOVERNING MEDICAL EXAMINATIONS**

(CT:VISA-1407; 03-17-2010)

- a. U.S. Public Health Service/Centers for Disease Control and Prevention (USPHS/CDC) regulations relating to medical examinations of applicants are contained in 42 CFR 34. For specific instructions for performance of medical examinations, see Technical Instructions (TIs) for Panel Physicians, the 2007 Tuberculosis (TB) TIs, and 2007 TIs for Vaccinations. Each panel physician

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should have his or her own personal copy of these instructions.

- b. On July 30, 2001, the CDC posted instructions to panel physicians for completing U.S. Department of State Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 1991 and Form DS-3024, Chest X-Ray and Classification Worksheet) or Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007 and Form DS-3030, Chest X-Ray and Classification Worksheet-TI 2007), and associated worksheets, Form DS-3024, or Form DS-3030, Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. (See CDC's Instructions for Department of State Forms.)
- c. Please provide a copy of these instructions to your panel physicians. These instructions are also available from the Consular Affairs Intranet home page under the visa office links. In addition, the Technical Instructions are available directly from the CDC's Web site.

## **9 FAM 40.11 N5 MEDICAL EXAMINATION OF APPLICANTS RESIDENT IN THE UNITED STATES APPLYING AT POST**

*(CT:VISA-1063; 10-09-2008)*

An individual who resides in the United States or who is present in the United States at the time of his or her visa application, but is applying for a visa at post must receive a medical examination from a panel physician designated by post. Such individuals may not submit medical examinations conducted by a civil surgeon in the United States.

## **9 FAM 40.11 N6 VALIDITY PERIOD OF APPLICANTS' MEDICAL EXAMINATION**

*(CT:VISA-2138; 07-09-2014)*

- a. *Medical examination validity is determined by CDC. All posts are required to use the 2007 TB Technical Instructions. The following validity periods apply:*
  - (1) *6 month validity: No TB findings, Non-TB Class "A" condition, Class "B"2TB, and Class "B"3 TB:*

**NOTE:** *The validity for the syphilis, and Hansen's disease portions of the medical examination matches the validity of the TB examinations. However, all other portions of the exam remain valid for up to one year for applicants initially found No TB, Class B2 TB, and Class B3 TB. If the TB exam syphilis, and Hansen's disease*

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*testing are repeated after six months and the findings have not changed, the exam is valid for an additional six months for a maximum of one year validity. For the complete table on medical exam validity, (see 9 FAM 40.11 Exhibit I).*

- (2) *3 month validity: Class "A" TB with waiver (rare), Class "B"1 TB Pulmonary, Class "B"1 TB Extrapulmonary, and No TB Class B Other- HIV Infection;*
- (3) *Class "A" TB without waiver: Not medically cleared to travel until completion of successful treatment.*
- b. Notwithstanding the provisions of INA 221(C) (8 U.S.C. 1201(C)), you should limit visa validity of the medical examination. For example, if an alien has a medical examination that is only valid for *four* months from the time of visa issuance, the visa should be valid for only *four* months.
- c. Applicants not traveling to the United States within the exam validity period will need to undergo a new medical examination.

## **9 FAM 40.11 N7 PANEL PHYSICIANS**

### **9 FAM 40.11 N7.1 Role of Panel Physician**

*(CT:VISA-1407; 03-17-2010)*

- a. The panel physician is responsible for the entire examination. The examination must include:
  - (1) A medical history;
  - (2) An immunization history (immigrant visa (IV) applicants only);
  - (3) A physical examination;
  - (4) A mental examination;
  - (5) A full-size chest radiograph;
  - (6) A serologic test for syphilis;
  - (7) A sputum smear examination;
  - (8) Administration of immunizations (immigrant visa (IV) applicants only);
  - (9) Report of the results of all required tests and consultations;
  - (10) Verification that the completed medical report forms are sent directly to you; and
  - (11) Verification that the person appearing for the medical examination is the person actually applying for the visa.
- b. The panel physician does not have the authority to determine whether an

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applicant is actually eligible for a visa. You must make that determination after reviewing all the records, including the report of the medical examination. (See 9 FAM 42.66 Exhibit I.)

## **9 FAM 40.11 N7.2 Medical Screening Forms**

*(CT:VISA-1407; 03-17-2010)*

- a. The panel physician must complete the following forms for all visa applicants referred to them for visa medical examinations:
  - (1) Form DS-2053, Medical Examination for Immigrant or Refugee Applicants (for use with TB Technical Instructions 1991 and Form DS-3024) or Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007 and Form DS-3030);
  - (2) Form DS-3024, Chest X-Ray and Classification Worksheet (for use with 1991 TB Technical Instructions) or Form DS-3030, Chest X-Ray and Classification Worksheet-TI 2007 (for use with the 2007 TB Technical Instructions);
  - (3) Form DS-3025, Vaccination Documentation Worksheet; and
  - (4) Form DS-3026, Medical History and Physical Examination Worksheet.
- b. A nurse or other authorized staff may complete forms on behalf of the panel physician. The panel physician, however, must review the records and make the determination as to whether the applicant meets all necessary medical requirements or if he or she should seek a waiver.
- c. All completed forms and any related worksheets should be provided to you as the panel physician's medical examination report for each applicant.

## **9 FAM 40.11 N7.3 Basis of Medical Report in Determining Eligibility Under INA 212(a)(1)**

*(CT:VISA-1452; 07-19-2010)*

- a. The panel physician conducts the examination and testing required to assess the applicant's medical condition and then completes Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 1991 and Form DS-3024, Chest X-Ray and Classification Worksheet) or Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007 and Form DS-3030, Chest X-Ray and Classification Worksheet-TI 2007), Form DS-3024, (for use with TB Technical Instructions 1991) or Form DS-3030, (for use with TB Technical Instructions 2007), Form DS-3025, Vaccination Documentation Worksheet, and Form DS-3026, Medical History and Physical Examination Worksheet. You cannot find an applicant inadmissible under INA 212(a)(1) (8 U.S.C. 1182(a)(1)) without a report from the panel physician. The panel

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physician determines whether diagnostic tests are needed when the medical condition is self-declared by the applicant.

b. Upon completion of the applicant's medical examination, the examining physician must submit the report to you. The report must include the results of any diagnostic tests required for the diagnosis of the diseases identified as communicable diseases of public health significance and any other tests necessary to confirm suspected diagnoses of any other "Class "A"" or "Class "B"" condition. You will see the list of the results on the form as follows:

- (1) No defect, disease, or disability;
- (2) "Class "A""—a communicable disease of public health significance or a physical or mental disorder associated with harmful behavior, or drug abuse/addiction (INA 212(a)(1)(A)(i), (iii), or (iv)) (8 U.S.C. 1182(a)(1)(A)(i), (iii), or (iv)); or
- (3) "Class "B""—physical or mental defect, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical or mental well-being.

## **9 FAM 40.11 N7.4 Effect of Findings**

### **9 FAM 40.11 N7.4-1 "Class "A"" Finding**

*(CT:VISA-1063; 10-09-2008)*

A "Class "A"" medical finding requires you to find an alien inadmissible under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). The physician's examination must be conducted in accordance with the current "Technical Instructions for Medical Examination of Aliens" (Technical Instructions) distributed by the Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC).

### **9 FAM 40.11 N7.4-2 "Class "B"" Finding**

*(CT:VISA-1063; 10-09-2008)*

A "Class "B"" finding informs you that a serious medical condition exists which constitutes a departure from normal health or well-being. You must consider such finding when assessing the alien's eligibility for visa issuance; i.e., the likelihood of the alien becoming a public charge.

## **9 FAM 40.11 N8 BASIS OF MEDICAL REPORT IN DETERMINING INADMISSIBILITY UNDER INA 212(A)(4)**

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(CT:VISA-2055; 12-03-2013)

In addition to the examination for specific inadmissible conditions, the examining physician must also look for other physical and mental abnormalities that suggest the alien is likely to become a public charge. When identifying a "Class "B"" medical condition that may render the alien inadmissible under INA 212(a)(4) (8 U.S.C. 1182(a)(4)), the examining physician is required to reveal not only the full extent of the condition, but the extent of the approximate treatment needed to care for such condition. Based on the results of the examination, you must determine whether the disease or disability would be likely to render the alien unable to care for him or herself or attend school or work, or require extensive medical care or institutionalization. Thus, certain conditions (e.g., developmental disability) are no longer explicitly listed as inadmissible conditions. Instead, the examining physician's diagnosis and opinion regarding treatment and disability would be factors for you to consider in your "totality of the circumstances" analysis of admissibility under INA 212(a)(4) (8 U.S.C. 1182(a)(4)). (See 9 FAM 40.41 N5.)

## **9 FAM 40.11 N9 INA 212(A)(1)(A)(I) COMMUNICABLE DISEASES OF PUBLIC HEALTH SIGNIFICANCE**

### **9 FAM 40.11 N9.1 Centers for Disease Control (CDC's) Technical Instructions List of Communicable Diseases of Public Health Significance**

(CT:VISA-1452; 07-19-2010)

INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)) refers to an inadmissible disease as "communicable disease of public health significance." The CDC's Technical Instructions lists these diseases which are also defined at 42 CFR 34.2(b). The following diseases are those that the CDC currently defines as "communicable diseases of public health significance." Note that as of January 4, 2010, HIV is no longer included in this list.

- (1) Chancroid;
- (2) Communicable diseases as listed under Section 361(b) of the Public Health Service Act. The revised list of quarantinable communicable diseases is available at the CDC, Centers for Disease Control, Public Health Service Web site;
- (3) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the listed factors in 42 CFR 34.3(d);

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- (4) Gonorrhea;
- (5) Granuloma inguinale;
- (6) Hansen's disease (Leprosy) infectious;
- (7) Lymphogranuloma venereum;
- (8) Syphilis, infectious stage; and
- (9) Tuberculosis, active.

**9 FAM 40.11 N9.1-1 Immigrant Afflicted with Human Immunodeficiency Virus (HIV)**

*(CT:VISA-1452; 07-19-2010)*

HIV-positive applicants who were refused a visa under INA Section 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)) prior to January 4, 2010, are no longer ineligible. Procedures for processing these cases are as follows:

- (1) If the last refusal on the case was less than one year ago, then the INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)) refusal should be overcome/waived in the system and a CLOK should be sent to remove the inadmissibility from Consular Lookout and Support System(CLASS). If the medical examination has expired it must be repeated;
- (2) If the last refusal on the case was more than one year ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician, and pay all applicable fees. The INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)) refusal should be overcome/waived in the system at the time of interview and a CLOK should be sent to remove the inadmissibility from CLASS. If the applicant is otherwise eligible, then the visa may be issued; and
- (3) If a waiver application has already been submitted to U.S. Citizenship and Immigration Services (USCIS) and is pending decision, the application should be held until USCIS approval is granted or until January 4, 2010, when a CLOK may be sent and the visa issued without a waiver.

**9 FAM 40.11 N9.1-2 Public Charge as Related to Human Immunodeficiency Virus (HIV) Positive Applicants**

*(CT:VISA-1407; 03-17-2010)*

- a. Under section 212(a)(4) of the INA, an immigrant visa (IV) applicant must demonstrate that he or she has a means of support in the United States and that he or she, therefore, will not need to seek public financial assistance. It may be difficult for HIV-positive applicants to meet this requirement of the law because the cost of treating the illness can be very high and because the applicant may not be able to work or obtain medical insurance. You must be

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satisfied that the applicant has access to funds sufficient for his or her support. You need to consider the family's income and other assets, including medical insurance coverage for any and all HIV-related expenses, availability of public health services and hospitalization for which no provision for collecting fees from patients are made, and any other relevant factors in making this determination.

- b. There is no waiver possible for this inadmissibility; however, if the applicant is able to demonstrate that he or she has acquired additional insurance or funds which would be sufficient to overcome the inadmissibility, you may determine that the inadmissibility no longer applies.
- c. On November 2, 2009, CDC issued the HIV Final Rule removing HIV infection from the definition of communicable disease of public health significance effective January 4, 2010. Although HIV infection is no longer a ground of inadmissibility under section 212(a)(1)(A)(i) of the INA, the requirement that an HIV-positive applicant must demonstrate that he or she overcomes inadmissibility under section 212(a)(4) of the INA remains.

## **9 FAM 40.11 N9.2 Immigrant Afflicted with Tuberculosis**

*(CT:VISA-1407; 03-17-2010)*

- a. The CDC revised the Technical Instructions for Tuberculosis (TB TIs). The 2007 TB TIs will be phased in at posts over the next several years. Posts that are not yet 2007 TB TI compliant will continue to use the 1991 TB TIs.
- b. 2007 TB TIs: The medical examination is not considered complete until you obtain a determination from the medical examiner(s) with the applicant's tuberculosis classification(s). Applicants should be assigned one or more of the following TB classifications:
  - (1) No TB Classification;
  - (2) "Class "A" TB" – chest x-ray findings suggestive of pulmonary TB and positive sputum smears or positive cultures (see 9 FAM 40.11 N9.2-1);
  - (3) "Class "B"1 TB, Pulmonary;"
    - (a) No treatment – chest x-ray findings suggestive of pulmonary TB but negative sputum smears and cultures (see 9 FAM 40.11 N9.2-2);
    - (b) Completed treatment – Diagnosed with pulmonary TB and successfully completed directly observed therapy;
  - (4) "Class "B"1 TB, Extrapulmonary" – TB clinically active, not infectious, x-ray or other evidence of TB outside of the lung (see 9 FAM 40.11 N9.2-2);
  - (5) "Class "B"2 TB, Latent Tuberculosis Infection (LTBI) Evaluation" – Applicants who have tuberculin skin test (TST) greater than or equal to 10 mm but who otherwise have a negative evaluation to TB (see 9 FAM 40.11

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N9.2-2); or

- (6) "Class "B"3 TB, Contact Evaluation" – Applicants who have had contact with a known TB case. Contact is defined as having shared the same enclosed air space (i.e., exposure) in a household or other closed environment for a prolonged period of time (days or weeks, not minutes or hours) with a person who had a smear and/or culture-positive for pulmonary tuberculosis (see 9 FAM 40.11 N9.2-2).
- c. For applicants infected with Class "A" TB, the medical exam is not considered complete until the applicant:
  - (1) Receives the recommended treatment in accordance with the revised 2007 TB TIs. The Technical Instructions are available on the CDC's Web site. The recommended treatment involves directly observed therapy (DOT) where a health care worker watches a patient swallow each dose of medication;
  - (2) DOT treatment enhances adherence and reduces the risk of development of drug resistance. The 2007 TB TIs require drug susceptibility testing (DST) of sputum cultures to determine which medications will treat the applicant's disease; and
  - (3) Has the negative sputum smear and culture for acid fast bacilli for three consecutive working days. The 2007 TB TIs require laboratory cultures of sputum samples which are more effective in detecting tuberculosis than chest x-rays or sputum smears alone.
- d. Visa applicants ten (10) years of age or younger who require TB sputum cultures during their visa medical examination, regardless of their HIV infection status, may be medically cleared to travel to the United States immediately after sputum smear analysis (while sputum culture results are pending) if they do not have:
  - (1) Sputum smears positive for acid-fast bacilli (AFB);
  - (2) Chest X-rays that include one or more cavities and/or extensive disease;
  - (3) Respiratory symptoms that include forceful and productive cough; and/or
  - (4) Are a known contact with a person with multidrug-resistant (MDR) TB who was infectious at the time of contact.
- e. Children who meet the above criteria should be found to have a Class "B"1 TB, Pulmonary classification by the examining panel physician. Because this classification is not considered to be an inadmissibility, you may issue visas, to otherwise qualified applicants, without first processing a waiver.

NOTE: If the applicant has other medical ineligibilities, then a waiver may still need to be filed. (See 9 FAM 40.11 N13.)

- f. 1991 TB TI: The medical examination is not considered complete in the case of an applicant found to be afflicted with tuberculosis, until you obtain a

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determination from the medical examiner as to whether the tuberculosis is:

- (1) "Class "A""-1—infectious, communicable (see 9 FAM 40.11 N9.2-1);
- (2) "Class "A""-2—infectious, not for travel purposes (see 9 FAM 40.11 N9.2-1);
- (3) "Class "B""-1—clinically active, not infectious (see 9 FAM 40.11 N9.2-2); or
- (4) "Class "B""-2—not clinically active (see 9 FAM 40.11 N9.2-2).

g. For applicants infected with Class "A" TB, the medical exam is not considered complete until the applicant:

- (1) Receives the recommended treatment in accordance with the current Technical Instructions; and
- (2) Has a negative sputum smear examination for acid fast bacilli on three consecutive days.

## **9 FAM 40.11 N9.2-1 "Class "A"" Finding for Infectious Tuberculosis**

*(CT:VISA-1452; 07-19-2010)*

- a. 2007 or 1991 TB TIs: A visa applicant identified by the panel physician as having "Class "A"" infectious tuberculosis is ineligible to receive a visa under INA 212(a)(1) (8 U.S.C. 1182(a)(1)). However, in exceptional medical situations, a provision allows applicants undergoing pulmonary tuberculosis treatment to petition for a Class "A" waiver. Waivers can be pursued for any applicant who has a complicated clinical course and who would benefit from receiving treatment of their TB in the United States. It should be noted that historically these waivers have rarely been granted due to the infectious nature of the illness.
- b. You may recommend a waiver of the ground of inadmissibility to the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) for IV or DHS/U.S. Customs and Border Protection (CBP) for NIV; provided that the alien has met certain HHS/PHS/CDC requirements. (See 9 FAM 40.11 N13 for waiver procedures for immigrants or 9 FAM 40.11 N14 for waiver procedures for nonimmigrants.)
- c. Any applicant with Class "A" TB who needs treatment overseas and who is not granted a waiver, is medically ineligible to receive a visa until the completion of successful DOT treatment and have negative sputum smears and cultures at the end of therapy in accordance to the 2007 TB TIs or who have negative sputum smears for three consecutive days in accordance to the 1991 TB TIs. Consistent with other applicants started on tuberculosis treatment prior to travel, if TB therapy is started for an applicant ten years of age or younger, the applicant should be found to have a Class "A" TB classification by the panel physician. In this case, a Class "A" waiver can be filed with CDC so that it can

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be reviewed and the applicant can travel to the United States before completion of therapy.

NOTE: For any Class "A" TB case involving a young child, the CDC supports the filing of a waiver application so that they may review and adjudicate in a timely manner.

- d. Do not issue a visa to applicants with positive sputum smears or positive cultures who do not want to be treated.
- e. Do not issue a visa to an applicant with a history of noncompliance until he or she has completed DOT treatment in accordance to the 2007 TB TIs or until he or she has three consecutive negative sputum smears in accordance to the 1991 TB TIs.

## **9 FAM 40.11 N9.2-2 "Class "B"" Finding for Infectious Tuberculosis**

*(CT:VISA-1063; 10-09-2008)*

An alien who is found to have "Class "B"" medical condition for tuberculosis is not inadmissible under INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)).

## **9 FAM 40.11 N9.2-3 Medical Treatment at U.S. Military Institution**

*(CT:VISA-1407; 03-17-2010)*

Although alien dependents of U.S. military personnel may not use U.S. military facilities for visa-related medical examinations, such facilities are authorized to treat alien dependents that have tuberculosis. Those military facilities designated by the Surgeon General of any of the U.S. Armed Services, or by the Chief Surgeon of any major Army command abroad, are considered acceptable to U.S. Public Health Service (USPHS) for the treatment of tuberculosis. A statement from the Surgeon General or a Chief Surgeon that the alien will be admitted for treatment may be accepted as meeting the requirements of 9 FAM 40.11 N13.2. The name and address of the military hospital in the United States where the treatment will be provided must be shown on Form I-601, Application for Waiver of Ground of Inadmissibility, Section B.

## **9 FAM 40.11 N10 INA 212(A)(1)(A)(II) IMMUNIZATION REQUIREMENT**

**9 FAM 40.11 N10.1 Statutory Requirement***(CT:VISA-1407; 03-17-2010)*

Section 341(b) of Public Law 104-208 added a requirement that all aliens lawfully admitted to the United States for permanent residence be vaccinated against certain vaccine-preventable diseases. However, Public Law 105-73 provides an exemption for internationally adopted children (IR-3s and IR-4s) 10 years of age or younger from immunization requirement.

**9 FAM 40.11 N10.2 Required Vaccinations***(CT:VISA-1839; 06-05-2012)*

- a. Although INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) lists specific vaccine-preventable diseases, the language of INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) requires immigrants "to present documentation of having received vaccination against vaccine-preventable diseases" including any other vaccinations against vaccine preventable diseases recommended by the Advisory Committee for Immunization Practices (ACIP).
- b. On November 13, 2009, the CDC issued a final notice, which changed the criteria for requiring vaccinations based on recommendations from the ACIP. Effective December 14, 2009, in order for a vaccination recommended by ACIP to be required for immigrants under the new criteria, the vaccine must:
  - (1) Be age appropriate as recommended by ACIP for the general U.S. population; and
  - (2) Protect against a disease that has the potential to cause an outbreak; or
  - (3) Protect against a disease that has been eliminated in the United States or is in the process of being eliminated.
- c. Vaccinations currently required by CDC are as follows (Note – many vaccines have age-appropriate guidelines):
  - (1) Mumps;
  - (2) Measles;
  - (3) Rubella;
  - (4) Polio;
  - (5) Tetanus;
  - (6) Diphtheria;
  - (7) Pertussis;
  - (8) Haemophilus influenzae Type B
  - (9) Rotavirus;
  - (10) Hepatitis A;

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- (11) Hepatitis B;
- (12) Meningococcal disease;
- (13) Varicella;
- (14) Pneumococcal;
- (15) Influenza.

d. Applicants are required to receive at least one dose of each age-appropriate vaccine. If the applicant had previously received a dose or doses of a required vaccine but had not completed the series, then the next required dose should be administered. Although applicants are not required to complete the vaccine series they are encouraged to receive as many as possible prior to travel to the United States. The vaccinations required by the CDC include:

- (1) Vaccinations against vaccine-preventable diseases explicitly listed in INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)); and
- (2) Vaccinations recommended by the ACIP for U.S. immigration purposes.

e. For information regarding the ACIP, contact:

Advisory Committee on Immunization Practices (ACIP) Centers for Disease Control and Prevention 1600 Clifton Road, N.E., Mailstop E-05  
Atlanta, GA 30333 USA  
Phone: 404-639-8836  
Fax: 404-639-8905  
E-mail: acip@cdc.gov

**9 FAM 40.11 N10.3 “Not Medically Appropriate” Categories on Form DS-3025, Vaccination Documentation Worksheet**

*(CT:VISA-1839; 06-05-2012)*

The CDC and the Department accept that in many cases it might not be medically appropriate to administer a dose of a particular vaccine. Form DS-3025, Vaccination Documentation Worksheet, has five “Not Medically Appropriate” categories that are acceptable. These categories should be used when determining an applicant’s eligibility for a blanket waiver. A blanket waiver is a waiver that is applied uniformly to a group of conditions and does not require a separate waiver application or fee to be filed with USCIS. The five categories are:

- (1) Not age appropriate – for all applicants this box will need to be checked for at least one of the required vaccines. For example, infants and adults do not need all the same vaccinations;
- (2) Insufficient time interval between doses – this box will be checked if

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administration of the single dose of a vaccine at the time of the medical examination does not complete the series for that vaccine. Only one dose of each series is required to be administered by the panel physician for immigration purposes;

- (3) Contraindicated – A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given (i.e., an allergic reaction);
- (4) Not routinely available – “Not routinely available” can mean that a vaccine is not available in a particular country, that a panel site does not regularly stock the vaccine, or that due to a shortage it cannot be obtained in a reasonable amount of time. Cost should not be a factor of consideration.
- (5) Not fall (flu) season – The influenza vaccine is required during the influenza (flu) season; if it is not flu season at post this vaccination is not required. Influenza occurs throughout the year in tropical areas.

## **9 FAM 40.11 N10.4 Cost of Vaccinations**

*(CT:VISA-1063; 10-09-2008)*

The CDC and the Department accept that some panel physicians will raise the cost of the medical examination to take into account the cost of vaccinations. The costs for the vaccinations and the administering of such vaccination, however, should not be in excess of those charged the general public.

## **9 FAM 40.11 N10.5 Vaccination Requirements for Fiancé(e)**

*(CT:VISA-1063; 10-09-2008)*

Fiancé(e) visa applicants, as nonimmigrant visa (NIV) applicants, technically are not subject to the INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) vaccination requirement. However, we (Department of State) and the Department of Homeland Security (DHS) have agreed that medical exams for fiancé(e) visa applicants should include the vaccination assessment as a matter of expediency. Every effort should be made, therefore, to encourage fiancé(e) visa applicants to meet the vaccination requirements before admission to the United States. Nevertheless, do not refuse K-visa applicants for refusing to meet the vaccination requirements.

## **9 FAM 40.11 N10.6 Exemptions from Vaccination Requirement for Foreign Adopted Children**

*(CT:VISA-1407; 03-17-2010)*

Applicants for IR-3 and IR-4 immigrant visas (IV) who are age 10 years or younger are exempt from the vaccination requirement if:

- (1) Prior to the child's admission to the United States, an adoptive parent or prospective adoptive parent executes the Form DS-1981, Affidavit Concerning Exemption From Immigrant Vaccination Requirements for a Foreign Adopted Child, stating that he or she is aware of the vaccination requirement. (See 9 FAM 40.11 N10.2);
- (2) The adoptive or prospective adoptive parent(s) will ensure that, within 30 days of the child's admission to the United States, or at the earliest time that is medically appropriate, the child will comply with the INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) vaccination requirement; and
- (3) The adoptive or prospective adoptive parent(s) provide an original copy of the signed affidavit to you either prior to or at the time of the visa interview for inclusion in the case file. (This copy must be attached to the Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, and included with the supporting documents attached to the issued IR-3 or IR-4 visa.)

## **9 FAM 40.11 N10.7 Form DS-1981, Affidavit Concerning Exemption From Immigrant Vaccination Requirements for a Foreign Adopted Child**

*(CT:VISA-1063; 10-09-2008)*

- a. A panel physician may accept the verbal assurances of an adoptive parent, prospective adoptive parent, or individual representing the child's interests, as evidence that a completed Form DS-1981, Affidavit Concerning Exemption From Immigrant Vaccination Requirements for a Foreign Adopted Child, will be presented on behalf of the child at the time of the visa interview. In such cases, the panel physician should not conduct a vaccination assessment as part of the medical interview.
- b. The adoptive or prospective adoptive parent must provide a copy of the signed Form DS-1981 to you at the time of the visa interview. The copy is to be included in the case file. This copy must be attached to the Form DS-3025, Vaccination Documentation Worksheet, and included with the supporting documents attached to the issued IR-3 or IR-4 visa.

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**9 FAM 40.11 N10.8 Fraudulent Vaccination Records**

(CT:VISA-1407; 03-17-2010)

- a. If the panel physician believes that the applicant's vaccination record is fraudulent, you should treat the applicant in the same fashion as if he or she has failed to present the vaccination record. Acceptable vaccination documentation must come from a vaccination record, either a personal vaccination record or a copy of the medical chart record with entries made by a physician or other appropriate medical personnel. Only those records of doses of vaccines that include the dates of receipt (month, day, and year) are acceptable. Self-reported doses of vaccines without written documentation are not acceptable. This could mean that the applicant might be required to repeat doses of vaccines that he or she has actually received, if he or she is not able to provide sufficient acceptable documentation. In accordance with the CDC Technical Instructions, administering a second dose, however, will not endanger the applicant's health.
- b. To guarantee that applicants actually receive the required vaccinations and to guard against fraudulent vaccination records, CDC has agreed that posts may require applicants to receive the vaccinations from designated facilities. These facilities must follow the Technical Instructions on Vaccinations Requirements and must sign a separate contract. (CDC and the Post Liaison Division (CA/VO/F/P) can assist posts in developing a suitable contract.) Posts that plan to designate a specific facility must provide CA/VO/F/P and CDC with the name and address of the facility. The panel physician must still review the applicant's vaccination record, Form DS-3025, Vaccination Documentation Worksheet, and complete the medical examination, Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 1991) or Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007).

**9 FAM 40.11 N11 PHYSICAL OR MENTAL DISORDERS WITH HARMFUL BEHAVIOR AND SUBSTANCE-RELATED DISORDERS AND THE EFFECTS OF INA 212(A)(1)(A)(III)AND INA 212(A)(1)(A)(IV)**

(CT:VISA-1452; 07-19-2010)

- a. The medical screening for physical and mental disorders with associated harmful behaviors and substance-related disorders for visa applicants is required by law and is an essential component of the medical evaluations of aliens. INA sections 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)) and 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)) provide grounds of ineligibility

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related to physical or mental disorders that affect behavior, and substance addiction or abuse.

b. The mere presence of a physical or mental disorder does not by itself render the applicant ineligible. Under the provisions of INA 212(a)(1)(A)(iii)(I) and (II), (8 U.S.C. 1182(a)(1)(A)(iii)(I) and (II)) in order to find an applicant ineligible, it must be determined that the applicant:

- (1) Has a current physical or mental disorder with associated harmful behavior; or
- (2) Has a past physical or mental disorder with associated harmful behavior if the harmful behavior is likely to recur or lead to other harmful behavior in the future.

c. Note that harmful behavior is not a relevant factor in rendering a determination of ineligibility under the provisions of INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)). Further, an immigrant visa (IV) waiver of inadmissibility is not available to an alien who is diagnosed with substance abuse or addiction. For a Class "A" determination under Section INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)) for Drug (Substance) Abuse or Drug Addiction (Dependence), an applicant must meet current DSM diagnostic criteria for substance dependence or abuse with any of the specific substances listed in Schedules I through V of Section 202 of the Controlled Substances Act. Such a Class "A" medical determination by a panel physician, renders the applicant ineligible for a visa under INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)).

NOTE: An applicant that meets current DSM criteria for substance abuse or dependence for other substances, including alcohol, NOT listed in Schedules I through V of Section 202 of the Controlled Substance Act is not Class "A" (medical). However, if there is associated harmful behavior, the applicant may be classified as Class "A" and found inadmissible under INA 212(a)(1)(A)(iii)(I) and/or (II) (8 U.S.C. 1182(a)(1)(A)(iii)(I) and/or (II)).

Substances used for clinical care in medical practice are not prohibited and do not represent substance abuse.

d. For cases previously refused under INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)) and INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)) due to a Class "A" medical finding:

- (1) If the last refusal on the case was less than one year ago, send the applicant to the panel physician for a new medical examination to determine whether the Class "A" finding for physical and mental disorders with associated harmful behaviors and/or substance-related disorders still applies. A new medical is required, regardless of whether the previous exam has expired. If the applicant is found Class "B", overcome/waive the INA 212(a)(1)(a)(iii) or (iv) (8 U.S.C. 1182(a)(1)(a)(iii) or (iv)) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

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(2) If the last refusal on the case was more than one year ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician, and pay all applicable fees. If the applicant is found Class "B", then overcome/waive the INA 212(a)(1)(a)(iii) or (iv) (8 U.S.C. 1182(a)(1)(a)(iii) or (iv)) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

## **9 FAM 40.11 N11.1 Key Concepts of Mental Health**

*(CT:VISA-1839; 06-05-2012)*

a. Physical and Mental Health Disorder Key Concepts:

- (1) A physical disorder is a clinically diagnosed medical condition where the focus of attention is physical manifestations. Only medical conditions that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.
- (2) Mental disorders are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof). Only mental disorders that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.
- (3) Harmful behavior is defined as an action associated with a physical or mental disorder that is or has caused:
  - (a) Serious psychological or physical injury to the alien or to others (e.g., suicide attempt or pedophilia);
  - (b) A serious threat to the health or safety of the alien or others (e.g., driving while intoxicated or verbally threatening to kill someone); and
  - (c) Major property damage.
- (4) Current harmful behavior is defined as currently engaging in harmful behavior that has continuously occurred and seems ongoing.
- (5) A determination of future harmful behavior must be made if the applicant presently is or has in the past engaged in harmful behavior associated with a physical or mental disorder, and the panel physician must evaluate whether the harmful behavior is likely to recur. Many factors enter into this determination of classification, and the decision requires clinical judgment.

NOTE: Only harmful behavior that is associated with a physical or mental disorder is relevant for the classification of visa ineligibility. Neither harmful behavior nor the physical or mental disorder alone causes an alien to be medically ineligible.

b. In general:

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- (1) To establish any substance-related diagnosis, the examining physician must document the pattern or use of the substance and behavioral, physical, and psychological effects associated with the use or cessation of use of that substance;
- (2) Substance dependence, either on alcohol or other psychoactive substances, is characterized by compulsive long-term use of the substance, despite significant substance-related physical, psychological, social, occupational, or behavioral problems;
- (3) Substance abuse is characterized by a pattern of recurrent substance use despite adverse consequences or impairment;
- (4) The current version of the DSM defines sustained, full remission as a period of at least 12 months during which no substance use or associated harmful behavior have occurred. The panel physician has discretion to use their clinical judgment to determine if 12 months is an acceptable period of time for an individual applicant to demonstrate sustained, full remission. Remission must be considered in two contexts:
  - (a) General mental disorders; and
  - (b) Substance-related disorders.
  - (c) For general mental disorders, the determination of remission must be made based on the assessment of associated harmful behavior, either current or a history of harmful behavior judged likely to recur, and DSM criteria. This includes substance-related disorders for those substances, including alcohol, not listed in Schedules I through V of Section 202 of the Controlled Substances Act.
  - (d) For substance-related disorders for those substances listed in Schedule I through V of Section 202 of the Controlled Substances Act, the determination of remission must be made based on applicant's substance use and DSM criteria.
- (5) The practical significance for diagnosis of remission is that applicants who are or have been determined to be Class "A" for drug abuse or addiction for those substances listed in Schedule I through V of Section 202 of the Controlled Substance Act are not eligible for a waiver and must complete the time period for sustained, full remission before reapplying for admission.

## **9 FAM 40.11 N11.2 Alcohol Abuse or Dependence**

*(CT:VISA-1452; 07-19-2010)*

- a. Although, INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)) does not refer explicitly to alcoholics or alcoholism, alcohol abuse/dependence constitutes a medical condition. The same criteria apply for evaluation of dependence or abuse of alcohol as are found in the current DSM for other substances (drugs).

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The diagnosis of alcohol abuse or dependence alone does not make an applicant ineligible to receive a visa unless there is evidence of current or past harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the alien or others in the future.

- b. To ensure proper evaluation, you must refer applicants (IV and NIV) to panel physicians when they have:
  - (1) A single alcohol related arrest or conviction within the last five years;
  - (2) Two or more alcohol related arrests or convictions within the last ten years; or
  - (3) If there is any other evidence to suggest an alcohol problem.
- c. Applicants who are referred to a panel physician due to alcohol-related offenses must receive the full medical exam evaluation, less the vaccination requirements for NIV applicants. Chest X-rays and any other necessary testing must be conducted for the examiner to be considered complete.
- d. An NIV applicant with a single alcohol-related arrest or conviction within the last five years who the panel physician finds to have a Class "B" or no physical or mental condition, who is otherwise eligible to receive a visa, and who has not had another alcohol-related arrest or conviction since the original or previous exam does not have to repeat the medical exam with each new NIV application. If an applicant is found to have a Class "A" condition associated with alcohol abuse or has two or more alcohol-related arrests or convictions within the last ten years, then the applicant must be referred to the panel physician with each new NIV application if the original medical exam has expired.

## **9 FAM 40.11 N11.3 Role of the Panel Physician in Evaluating Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders**

*(CT:VISA-1452; 07-19-2010)*

- a. Effective June 1, 2010, the CDC updated the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders (2010 MH TIs) to provide clarification that the diagnosis of physical and mental disorders with associated harmful behavior and substance-related disorders is made based on existing medical standards, as determined by the current version of the DSM. Panel physicians must follow these new instructions when evaluating visa applicants for physical or mental disorders with associated harmful behavior and substance related disorders.
- b. As part of the medical examination of aliens, the panel physician will carry out or obtain a mental health evaluation:
  - (1) To identify and diagnose any physical or mental disorder (including alcohol-

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related disorders);

- (2) To identify any harmful behavior associated with a disorder;
- (3) To identify the use of drugs, other than those required for medical reasons, and diagnose any substance-related disorder;
- (4) To determine the remission status of any disorder previously diagnosed; and
- (5) To determine the likelihood of recurrence of harmful behaviors associated with a physical or mental disorder.

c. The panel physician can recognize that an applicant with a physical or mental disorder might have associated harmful behavior during any point of the examination (while taking the medical history of a mental disorder, while taking history of harmful behavior, or while observing for current abnormal behavior during the physical examination).

d. For most applicants, the panel physician's examination will require only one appointment. However, for some applicants multiple appointments or specialist consultations may be required to make an accurate diagnosis of whether the applicant is afflicted with a Class "A" or Class "B" condition as it relates to physical or mental disorders with associated harmful behavior or substance abuse and addiction (dependence).

NOTE: Random screening for drugs is not part of the routine visa medical examination. The panel physician must evaluate the applicant's history and behavior, and perform a physical examination to determine if drug screening should be performed. Whole populations of applicants should not routinely be subject to random laboratory screening. The panel physician should make an individual decision based on the indications for drug screening.

## **9 FAM 40.11 N11.4 Referrals to Specialists for Further Evaluation**

*(CT:VISA-2058; 12-11-2013)*

- a. The panel physician must refer an applicant to a specialist consultant if after the medical interview, review of records (including Form DS-3026, Medical History and Physical Examination Worksheet,) and performing a mental status and physical examination, the panel physician is not able to:
  - (1) Arrive at a probable psychiatric diagnosis for purposes of the determination of a mental disorder with associated harmful behavior (past or present);
  - (2) Arrive at a probable diagnosis of a substance-related disorder according to DSM criteria; or
  - (3) Classify as a Class "A" or B condition.
- b. If an applicant is referred to a specialist for psychiatric evaluation and further

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assistance in determining the diagnosis and classification is needed CDC's Division of Global Migration and Quarantine (DGMQ) may be consulted to provide additional assistance. If CDC/DGMQ is consulted, a copy of all pertinent medical information may be faxed to 404-639-4441 or sent visa secure files email to cdcQAP@cdc.gov.

## **9 FAM 40.11 N11.5 Determining Class "A" or Class "B" Physical and Mental Disorders with Associated Harmful Behaviors and Substance Related Disorders Conditions**

*(CT:VISA-1452; 07-19-2010)*

- a. Class "A" medical conditions render a visa applicant ineligible to receive a visa and, for mental health, include applicants who are determined by the panel physician to have:
  - (1) A current physical or mental disorder with associated harmful behavior;
  - (2) A past history of mental disorder with associated harmful behavior if the harmful behavior is likely to recur or to lead to other harmful behavior in the future; and/or
  - (3) Drug (substance) abuse or addiction (dependence) for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act.
- b. Class "B" medical conditions are not medically ineligible conditions and include applicants who are determined to have a physical or mental abnormality, disease or disability serious in degree or nature amounting to a substantial departure from well-being.
- c. If a panel physician is unable to determine whether an applicant has a diagnosis of a physical or mental disorder, or substance abuse or dependence, then classification may be deferred in order to obtain additional medical evidence. When this occurs, the panel physician must explain to the applicant that he or she would like to see the applicant during the next 3 to 6 months to determine if abstinence is present (in order to classify the applicant).
- d. Applicants may have more than one classification. However, applicants cannot be classified both Class "A" and "B" for the same physical or mental disorder, or substance related disorder.
- e. Physical and mental disorders with associated harmful behavior and Substance-related disorders classifications and descriptions are listed below:
  - (1) No Class "A" or Class "B" Classification: Applicants with no diagnosis of physical or mental disorder, or substance related disorder;
  - (2) Class "A" Physical or Mental Disorder with Associated Harmful Behavior (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act);

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- (3) Class "A" Substance Abuse or Dependence (for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act);
- (4) Class "B" Current Physical or Mental Disorder with No Associated Harmful Behavior (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act);
- (5) Class "B" History of Physical or Mental Disorder with Associated Harmful Behavior Unlikely to Recur (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act); and
- (6) Class "B" Substance Abuse or Dependence in Full Remission: Applicants diagnosed with full, sustained remission of substance abuse or dependence based on current DSM criteria.

## **9 FAM 40.11 N12 INA 212(G) WAIVER FOR IMMIGRANTS**

### **9 FAM 40.11 N12.1 Waiver Procedures for Immigrants**

*(CT:VISA-1839; 06-05-2012)*

- a. If you determine that an immigrant visa (IV) applicant is eligible to apply for a waiver of his or her ineligibilities, you should instruct the applicant to file Form I-601, Application for Waiver of Ground of Inadmissibility, with USCIS per the instructions for Form I-601.
- b. When posts refuse an IV case on medical grounds of ineligibility, they must scan the medical exam file into CCD so that it can be accessed by I-601 adjudicators at the USCIS Nebraska Service Center (NSC).
- c. When the NSC receives an I-601 seeking to waive a ground of inadmissibility under INA 212(a)(1)(A)(i) or (iii), the NSC will download a copy of the medical exam and any related medical records from CCD and send a copy of the Form I-601, medical exam and related medical records to the Centers for Disease Control and Prevention (CDC) for review. The NSC will not approve the Form I-601 until after consulting with CDC.
- d. Posts should not liaise with CDC while a Form I-601 is being adjudicated. USCIS will liaise as necessary with the CDC.
- e. If USCIS approves the waiver, and the applicant has no other ineligibilities, you may issue the visa.

## **9 FAM 40.11 N12.2 Applicant Inadmissible Under Grounds other than INA 212(a)(1)**

*(CT:VISA-1839; 06-05-2012)*

Although any applicant who has a medical ineligibility and qualifying relationship may apply for a waiver, you should not advise an applicant to file an I-601 waiver if an applicant has other grounds of ineligibility that cannot be waived. If the applicant is ineligible under a ground of the INA that cannot be waived, you may not issue a visa even if the INA 212(a)(1) (8 U.S.C. 1182(a)(1)) inadmissibility could be or is waived. An applicant ineligible under multiple grounds may apply for a waiver of other inadmissibility grounds at the same time as the waiver for INA 212(a)(1) (8 U.S.C. 1182(a)(1)) inadmissibility on the same Form I-601.

## **9 FAM 40.11 N12.3 Inadmissibility Under INA 212(a)(1)(A)(i)**

*(CT:VISA-1839; 06-05-2012)*

INA 212(g) (8 U.S.C. 1182(g)) provides for a discretionary waiver of subsections (i) of INA 212(a)(1)(A) (8 U.S.C. 1182(a)(1)(A)) if the alien is:

- (1) The spouse, unmarried son or daughter, or the minor unmarried lawfully adopted child of:
  - (a) A U.S. citizen;
  - (b) An alien lawfully admitted for permanent residence; or
  - (c) An alien who has been issued an immigrant visa (IV); or
- (2) The parent of:
  - (a) A U.S. citizen son or daughter;
  - (b) An alien lawfully admitted for permanent residence; or
  - (c) An alien who has been issued an immigrant visa (IV); or
- (3) A VAWA self-petitioner (as defined in INA 101(a)(51)).

## **9 FAM 40.11 N12.4 Waivers for Immigrant Visa (IV) Applicants with "Class "A"" Tuberculosis**

*(CT:VISA-1839; 06-05-2012)*

- a. Waivers for immigrant visa (IV) applicants identified by the panel physician as being afflicted with Class "A" infectious tuberculosis are only for exceptional medical situations because of the infectious nature of the illness. If the applicants requires a completed clinical treatment course that he or she, can only receive in the United States, the applicant should provide that information to USCIS.

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- b. You may inform an applicant that he or she may file a Form I-601 with USCIS for a waiver of medical grounds of inadmissibility provided that the alien qualifies per 9 FAM 40.11 N12.3. For cases involving communicable diseases, the applicant must be the spouse, unmarried son or daughter (regardless of age), or parent of a U.S. citizen, of a lawful permanent resident (LPR), or of an alien who has been issued an IV, or must be a VAWA self-petitioner (as defined in INA 101(a)(51)).
- c. If you determine that the IV applicant is eligible to apply for the waiver, direct the applicant to the Form I-601 instructions on the USCIS Web site.
- d. For complete NIV medical waiver procedures, see 9 FAM 40.11 N13.1*b*.

## **9 FAM 40.11 N12.5 Inadmissibility Under INA 212(a)(1)(A)(ii) Immunization Requirement**

*(CT:VISA-1452; 07-19-2010)*

- a. An immigrant visa (IV) applicant who is inadmissible under INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) Vaccination Requirements may benefit from an INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(A)) or INA 212(g)(2)(B) (8 U.S.C. 1182(g)(2)(B)) waiver if:
  - (1) The missing vaccinations are subsequently received; or
  - (2) The panel physician determines that administration of the required vaccine would be medically inappropriate given the applicant's age, medical history, or current medical condition.
- b. DHS/USCIS has delegated blanket authority to you to grant INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(A)) and INA 212(g)(2)(B) (8 U.S.C. 1182(g)(2)(B)) waivers without the need for fee or form.
- c. IV applicants who object to receiving the required vaccinations on religious or moral grounds must seek an INA 212(g)(2)(c) (8 U.S.C. 1182(g)(2)(c)) waiver from DHS/USCIS by filing the Form I-601, Application for Waiver of Ground of Inadmissibility, (see 9 FAM 40.11 N13.) You do not have the authority to adjudicate or grant INA 212(g)(2)(c) (8 U.S.C. 1182(g)(2)(c)) waivers.

## **9 FAM 40.11 N12.5-1 Waiver Under INA 212(g)(2)(A)**

*(CT:VISA-1452; 07-19-2010)*

INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(A)) appears to have been written chiefly to accommodate cases where an applicant seeks adjustment of the status. Since medical exams for most immigrant applicant are conducted prior to the visa interview, most applicants will not need an INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(A)) waiver. However, in cases where the applicant appears for their interview without the completed Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 1991) or

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Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007) (i.e., before their medical examination), refuse these applicants under INA 212(a)(1)(A)(ii) (8 U.S.C. 1182(a)(1)(A)(ii)) and tell the applicant to return to the panel physician to complete his or her medical examination. Once the medical examination, including required vaccinations, is completed, the applicant will obtain the completed Form DS-2053 or Form DS-2054 from the panel physician. This form is submitted to the consular office and you should approve a blanket waiver under INA 212(g)(2)(A) (8 U.S.C. 1182(g)(2)(A)).

## **9 FAM 40.11 N12.5-2 Waiver Under INA 212(g)(2)(B)**

*(CT:VISA-1452; 07-19-2010)*

INA 212(g)(2)(B) (8 U.S.C. 1182(g)(2)(B)) provides a waiver in any case where the panel physician determines that a required vaccination is medically inappropriate. In such cases, the panel physician will indicate on page two of the Form DS-2053, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 1991) or Form DS-2054, Medical Examination for Immigrant or Refugee Applicant (for use with TB Technical Instructions 2007), if the vaccine history is incomplete and which type of waiver is requested. You must refer to Form DS-3025, Vaccination Documentation Worksheet, and may then authorize a waiver in accordance with INA 212(g)(2)(B) (8 U.S.C. 1182(g)(2)(B)) for any of the following reasons (see 9 FAM 40.11 N10.3 for definitions of below categories):

- (1) Not age appropriate;
- (2) Contraindication;
- (3) Insufficient time interval between doses;
- (4) Seasonal administration; or
- (5) Vaccine unavailable.

## **9 FAM 40.11 N12.5-3 Waiver Under INA 212(g)(2)(C)**

*CT:VISA-1452; 07-19-2010)*

- a. The Secretary of Homeland Security may authorize an INA 212(g)(2)(C) (8 U.S.C. 1182(g)(2)(C)) waiver when the alien establishes that compliance with the vaccination requirements for immigrants would be contrary to his or her religious beliefs or moral convictions.
- b. An applicant seeking a waiver under INA 212(g)(2)(C) (8 U.S.C. 1182(g)(2)(C)) must:
  - (1) Complete the Form I-601, Application for Waiver of Ground of Inadmissibility (see 9 FAM 40.11 N13.1 for directions on completing the Form I-601);

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- (2) Provide written evidence that he or she qualifies for a waiver under INA 212(g)(2)(C) (8 U.S.C. 1182(g)(2)(C)) by meeting the three below requirements. If the waiver application is for a child, the parents must satisfy these requirements:
  - (a) He or she is opposed to vaccinations in any form;
  - (b) The objections are based on religious belief or moral convictions (whether or not the applicant is a member; and
  - (c) The religious belief or moral conviction (whether or not as part of a recognized religion) is sincere.
- c. Once the post receives the completed Form I-601 from the applicant, the post should send the entire waiver package to the USCIS office abroad having jurisdiction over the consular district.
- d. The post will collect from the applicant the USCIS waiver fee indicated in 8 CFR 103.7, either in the form of a cashier's check in the amount payable to USCIS or in cash, and provide the applicant with a receipt.
- e. If USCIS approves the waiver, and the applicant has no other ineligibilities, you may issue the visa.

**9 FAM 40.11 N12.5-4 INA 212(g)(2)(C) Waivers for IR-3 or IR-4 Applicants**

*(CT:VISA-1452; 07-19-2010)*

Applicants for IR-3 and IR-4 immigrant visas (IV) who are 10 years of age or younger are exempt from the vaccination requirement if:

- (1) Adoptive or prospective adoptive parents who could otherwise take advantage of the exemption from the vaccination requirement available to IR-3 and IR-4 applications; and
- (2) Adoptive or prospective adoptive parents must seek an INA 212(g)(2)(C) (8 U.S.C. 1182(g)(2)(C)) waiver on behalf of their adopted child. This is because the exemption available to IR-3 and IR-4 applicants is conditioned on the adoptive parent signing the Form DS-1981, Affidavit Concerning Exemption From Immigrant Vaccination Requirements for a Foreign Adopted Child, attesting that the child will receive any required and medically appropriate vaccinations following their arrival in the United States. (See 9 FAM 40.11 N10.6.)

## **9 FAM 40.11 N12.6 Inadmissibility Under INA 212(a)(1)(A)(iii) Physical or Mental Disorder**

*(CT:VISA-1452; 07-19-2010)*

The Secretary of Homeland Security may, under terms that he or she sets forth, in his or her discretion, and after consultation with the Secretary of Health and Human Services, grant a waiver to an alien inadmissible under INA 212(a)(1)(A)(iii) (8 U.S.C. 1182(a)(1)(A)(iii)).

## **9 FAM 40.11 N12.7 Inadmissibility Under INA 212(a)(1)(A)(iv) Drug Abuse or Addiction**

*(CT:VISA-1452; 07-19-2010)*

There is no waiver relief for an immigrant visa (IV) applicant who is admissible under INA 212(a)(1)(A)(iv) (8 U.S.C. 1182(a)(1)(A)(iv)). Do not issue an immigrant visa (IV) to an alien you determine to be a drug abuser or addicted to a drug described in section 202 of the Controlled Substances Act. (See 9 FAM 40.23 Exhibit I.)

## **9 FAM 40.11 N12.8 Simultaneous Visa Issuance to Family Members**

*(CT:VISA-1452; 07-19-2010)*

To prevent the separation of families, when an accompanying family member must seek a waiver under INA 212(g) (8 U.S.C. 1182(g)), the principal alien should be encouraged to begin the waiver procedures promptly.

## **9 FAM 40.11 N12.9 Issuing New or Replacement Visa**

*(CT:VISA-1452; 07-19-2010)*

You may issue a new or replacement visa to an alien who was previously granted a waiver under INA 212(g) (8 U.S.C. 1182(g)) if the conditions in 9 FAM 40.11 N13.4 are met.

## **9 FAM 40.11 N12.10 Validity of Waiver for Subsequent Entries**

*(CT:VISA-1452; 07-19-2010)*

The Department has accepted a DHS ruling that a waiver granted under INA 212(g) (8 U.S.C. 1182(g)) remains in full force and effect for any subsequent entries by the alien provided:

- (1) The waiver remains unrevoked;

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- (2) No new grounds of inadmissibility have arisen; and
- (3) The alien is complying with the conditions imposed in the original waiver.

## **9 FAM 40.11 N13 INA 212(D)(3)(A) WAIVER FOR NONIMMIGRANTS**

*(CT:VISA-1452; 07-19-2010)*

If you determine that an alien is inadmissible for a nonimmigrant visa (NIV) under any of the provisions of INA 212(a)(1)(A) (8 U.S.C. 1182(a)(1)(A)), you may recommend to U.S. Customs and Border Protection (DHS/USCBP), through the Admissibility Review Information Service (ARIS) system, that a waiver under INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) be granted to the alien. DHS/USCBP may, in its discretion, authorize a waiver to allow the alien temporary admission. (See 9 FAM 40.301 Notes and 9 FAM 40.301 Procedural Notes.)

### **9 FAM 40.11 N13.1 Aliens Traveling for Medical Reasons**

*(CT:VISA-1452; 07-19-2010)*

The requirements listed below must be fulfilled in the case of an alien traveling for medical treatment of a condition that leads to a finding of inadmissibility under INA 212(a)(1)(A)(i) & (iv) (8 U.S.C. 1182(a)(1)(A)(i) & (iv)). When a waiver of a medical ground of inadmissibility is deemed necessary, the applicant must establish that arrangements, including financial, have been made for treatment. When the personal resources of an alien are not sufficient or may not be available outside the alien's country of residence, the alien must include explicit information regarding which facilities are available for support during the proposed medical treatment. The sponsor of the affidavit must confirm that a bond will be made available if required by the DHS.

### **9 FAM 40.11 N13.2 Waivers for Nonimmigrant Visa (NIV) Applicants Afflicted with "Class "A"" Tuberculosis**

*(CT:VISA-1452; 07-19-2010)*

- a. Do not recommend a waiver for an NIV applicant identified by the panel physician as being afflicted with Class "A" infectious tuberculosis, unless he or she has a complicated clinical course and would benefit from receiving TB treatment in the United States. This type of waiver is for exceptional medical situations and historically these waivers have rarely been granted, due to the infectious nature of the illness.

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b. You may recommend a waiver of the ground of the medical ineligibility (if the applicant qualifies per paragraph (a)) to DHS/USCBP, through the ARIS system, that a waiver under INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) be granted to the alien. DHS/USCBP may, in its discretion, authorize a waiver to allow the alien temporary admission into the United States. (See 9 FAM 40.301 Notes and 9 FAM 40.301 Procedural Notes.)

## **9 FAM 40.11 N14 WHEN WAIVER IS NOT RECOMMENDED**

*(CT:VISA-1452; 07-19-2010)*

If you do not believe that a waiver is warranted, then you are not obligated to submit the case to USCIS or CBP for review. However, you must send a report to the Department, Advisory Opinions Division (CA/VO/L/A) for consideration under INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) on any case referred to in 9 FAM 40.301 N6.

## **9 FAM 40.11 N15 POSTING THE FEMALE GENITAL MUTILATION (FGM) NOTICE**

*(CT:VISA-1452; 07-19-2010)*

- a. Section 644 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104-208 (8 U.S.C. 1374), requires Department of Homeland Security (DHS), with the cooperation from the Department of State, to notify visa recipients of the severe harm to physical and psychological health caused by Female Genital Mutilation (FGM). DHS regulations require that written notice be given to immigrants in countries where FGM is a common practice.
- b. All posts must display the FGM notice (Form G-1015, Fact Sheet on Female Genital Mutilation) in the NIV and/or IV waiting room. This notice should be translated into the local language so that applicants from countries where FGM is practice will have notice that this practice is illegal in the United States. The notice (in English, French, Portuguese, Arabic, Amharic, Swahili, and Somalian) can be found on the CA Web site via the visas section.
- c. Posts should be able to download and print locally copies of the notice in the relevant language. Posts are authorized to use their Machine Readable Visa (MRV) allotment or fund site if needed to cover local reproduction costs. (See 9 FAM 42.73 PN11 for further information on FGM.)

## **9 FAM 40.11 N16 CONSULAR LOOKOUT AND SUPPORT SYSTEM (CLASS) ENTRIES**

*(CT:VISA-1452; 07-19-2010)*

- a. In cases where a confirmatory or laboratory medical test is required and a significant time lag (more than three days) is expected before the results are received, enter the name of the applicant pending test results in Consular Lookout and Support System (CLASS) as P1A1; i.e., quasi-refusal under INA 212(a)(1)(A)(i) (8 U.S.C. 1182(a)(1)(A)(i)). Place appropriate notes into the CLASS entry about the refusal code, including if available the expected final test or lab results. Once the final confirmed results become available, CLASS must be updated accordingly.
- b. If the test results are positive under 1A1 grounds, the quasi-refusal should be changed from a P1A1 to a 1A1. Appropriate notes should be included about the refusal.
- c. If the test results are negative, you must request that the P1A1 be deleted from CLASS. A negative test result means that the applicant is not ineligible on the basis of the 1A1.

## **9 FAM 40.11 N16.1 “Do Not Board” Consular Lookout and Support System (CLASS) Entries**

*(CT:VISA-1452; 07-19-2010)*

- a. Individuals who may pose a public health (PH) risk for disease transmission on board public conveyances are now being placed on travel restriction (“Do Not Board”) and intervention (“Lookout”) lists when CDC receives information about this public health threat from international and domestic public health officials. The CDC, Division of Global Migration and Quarantine, Travel Restriction and Intervention Team (CDC/DGMQ/TRIT), upon receiving information about the PH risk from the international and domestic public health officials, is responsible for requesting that DHS add an individual to a travel restriction and/or intervention list.
- b. DHS will notify the agency that maintains the list (Transportation Security Administration (TSA) and/or CBP) when the request is approved so that they can add that person to the appropriate list. The TRIT representative is also responsible for notifying the Post Liaison Division (CA/VO/F/P) and American Citizens Services and Crisis Management (CA/OCS/ACS) when an individual is added to one of the lists so they can take necessary actions on their part.
- c. A lookout is placed in the Transportation Enforcement Communications System (TECS) for the individual with the PH risk. In cases of foreign nationals, the TECS PH lookout will replicate into Class “A”s a 1A1 PH hit. The CLASS hit will contain notes about the specifics of the case. A 1A1 PH CLASS hit is considered

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a Class "A" medical condition and a visa inadmissibility.

- d. When CA/VO/F/P is notified by CDC/DGMQ/TRIT that a foreign national has been added to the "Do Not Board" list and/or "Lookout" list, post will be contacted and may be requested to assist with items such as notification to the individual and possibly to the local airlines.
  - (1) CA/OCS/ACS receives the notifications for American Citizens.
  - (2) If CA/VO/F/P or CA/OCS/ACS receives notification about a Legal Permanent Resident (LPR), they will notify post to pass this information to the regional of DHS/USCIS office.
- e. If post believes that there is an individual within their jurisdiction who may be eligible for a PH travel restriction or addition to the "Do Not Board" list, then the Travel Restriction and Intervention Team should be contacted through the CDC twenty-four hour Director's Emergency Operations Center by calling 770-488-7100. You should also contact your regional CA/VO/F/P liaison officer.

## **9 FAM 40.11 N16.2 Deleting Public Health Consular Lookout and Support System (CLASS) Entries**

*(CT:VISA-1452; 07-19-2010)*

- a. If a panel physician finds an applicant to have a Class "B" medical condition for which there was a previous Class "A" 1A1 CLASS entry, then you must CLOK out this entry.
- b. If you find a 1A1 PH CLASS hit that is no longer valid due to the applicant receiving treatment, then you should notify your regional Post Liaison Division (CA/VO/F/P) liaison officer to request removal of this CLASS entry. 1A1 PH Class entries created by TECS at the request of CDC/DGMQ/TRIT cannot be removed without proof that the individual no longer poses a travel risk of disease transmission.